Filed 1/25/10 In re P.D. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re P.D., a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. C.G. et al., Defendants and Appellants.	A124470 (Alameda County Super. Ct. No. OJ09011637)
C.G., Petitioner, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Real Party in Interest.	A126601 (Alameda County Super. Ct. No. OJ09011637A)

INTRODUCTION

In A124470, appellants C.G. (mother) and D.D. (father) challenge the juvenile court's jurisdictional findings and order issued on March 23, 2009, concerning their baby daughter P.D. Mother and father both contend that (1) the trial court erred by sustaining

jurisdiction over P.D. on the petition filed by respondent Alameda County Social Services Agency (Agency) pursuant to Welfare and Institutions Code section 300[1]; and, (2) the Agency failed to provide adequate notice to the relevant Indian tribes under the Indian Child Welfare Act (ICWA).

In A126601, mother petitions for a writ of mandate pursuant to California Rules of Court, rule 8.452, directing the juvenile court to vacate its orders terminating reunification services with P.D. at the 6-month review hearing and setting a hearing under Welfare and Institutions Code section 366.26. [2]

In A124470, we affirm the trial court's jurisdictional findings and orders and remand the matter for ICWA compliance. In A126601, we deny the writ petition.

FACTUAL AND PROCEDURAL BACKGROUND

A. Appeal No. A124470

On January 6, 2009, the Agency filed an original section 300 petition seeking jurisdiction over appellants' baby daughter, P.D. (born in November 2008). Pursuant to section 300, subdivision (b), the petition alleged that P.D. was under a substantial risk of harm or illness because of the parents' inability to care for the child due to substance abuse. In support of this allegation, the petition stated that the parents have a long history of substance abuse; both mother and minor tested positive for methadone at the time of the minor's birth; father had no stable housing; both parents had been sober only six months at the time of P.D.'s birth; both parents participate in methadone treatment; mother failed to provide a current drug test as requested by Child Protective Services (CPS); and mother has six other minor age children, two of which are by father and four of which have been permanently planned for adoption through CPS.

In support of the petition, the Agency filed a detention report dated January 7, 2009. The detention report states that parents have a long history of drug use and both

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[1] Further statutory references are to the Welfare and Institutions Code unless otherwise noted.

[2] A124470 and A126601 are hereby consolidated for purposes of appeal and disposition.

are on methadone at the Haart clinic. The report notes P.D. was hospitalized from birth because she was withdrawing from methadone, is now doing well, and was discharged to a foster home on January 6, 2009. Also, the report notes "poor functioning" by parents during P.D.'s time at the hospital. Parents spent a lot of time at the hospital and mother would often fail to remain awake while caring for the minor. Mother had to be "given cues" to wipe off milk that she spilled on the baby. Mother admitted her sleepiness was due to her receiving a full dose of methadone, that she needed the dose to be split in half, but did not follow through with her doctor at the Haart clinic.

The detention report states the social worker visited the home of mother's adult son Steven and found it to be "an appropriate space" where "mother had appropriate supplies." Steven told the social worker that mother could stay with him as long as she stayed clean. However, Steven did not want the father to stay in his home because he thinks his mother is more likely to remain sober without father around. Father does not have a residence, only a mailing address. Regarding mother's drug problem, the report states that mother was not in any structured drug therapy and was only being tested once a month at the Haart program. The social worker informed mother she needed to enroll in outpatient treatment and testing. On January 5, 2009, the social worker requested services for mother from the East Oakland Recovery program. The program tried to contact mother but could not reach her.

After a detention hearing on January 7, 2009, the court concluded that the Agency had made a prima facie showing the child is a minor described by section 300 and ordered that the minor remain in foster care for a further period of 15 judicial days. The court also ordered that the parents receive reunification services and visitation with P.D. by arrangement with the child welfare worker. Additionally, the court scheduled a further hearing on January 21, 2009.

Both parents filed a Parental Notification of Indian Status form on January 7, 2009. Mother reported that to her knowledge she had no Indian ancestry and father reported he may have Indian ancestry pertaining to the "Apache" tribe.

On January 16, 2009, the Agency filed a Jurisdiction/Disposition Report (jurisdiction report) in connection with the hearing scheduled for January 21, 2009. The jurisdiction report stated that P.D. was hospitalized from birth until January 6, 2009, to treat her for symptoms of drug withdrawal. Initially, P.D. suffered severe withdrawal symptoms, and had to be kept on morphine until she was able to transition to Phenobarbital. The foster parent reported to the social worker that P.D. is doing well since her discharge from the hospital. To begin with, P.D. was "fussy and up all night," but is now sleeping much better, eating well, and has gained weight.

The jurisdiction report notes the social worker "spoke at length with the parents after the detention hearing and gave the mother residential treatment referrals as well as providing the father with a referral to outpatient treatment." The social worker also gave mother and father the foster parent's name and phone number. However, the foster parent reported to the social worker that mother and father have not yet contacted her to arrange visitation with P.D. The first communication the social worker received from parents after the detention hearing was a telephone call from father on January 12. On that occasion, father stated he did not know why mother had not arranged to visit P.D., and that mother was staying some of the time with her adult son and some of the time with her adult daughter. Subsequently, the social worker received a telephone call from mother on January 15, in which mother said she had been sick but would like to visit P.D. on January 16. Mother did not leave a return phone number. The jurisdictional report also states that mother recently called the Alta Bates Hospital and left an abusive message complaining that hospital staff had reported her to the Agency.

In assessment and evaluation, the jurisdiction report states that although P.D. was "not a positive tox baby, [the mother] was a methadone positive" and therefore mother had to be assessed to ensure the minor could be "returned to her under safe conditions." Concerns were raised on this score at the outset due to "mother's presentation of sleepiness, questions about homelessness and her overall history." The social worker observed that since removal of the minor, "mother has not shown any follow through and she has not even visited the minor." The social worker opined that "the mother is not

stepping up to this responsibility [of preparing herself for placement] in an expeditious manner." The social worker recommended that the court find true the allegations in the section 300 petition, declare P.D. a dependent of the Juvenile Court, deny reunification services to the parents and plan for adoption of P.D. by May 21, 2009.

At the scheduled hearing on January 21, 2009, the court noted that father did not qualify for presumed father status because he had not furnished a declaration of paternity. The court stated that father "remains as an alleged father." With the agreement of the parties, the court set a contested jurisdictional hearing on February 23, 2009, with presentation of evidence on the question of the sufficiency of the petition to support a jurisdictional finding.

The Agency prepared an Interim Report dated February 20, 2009, in connection with the hearing scheduled for February 23, 2009 (February 2009 report). The February 2009 report noted that ICWA may apply and that the Apache Nation was noticed on January 13, 2009. In the case overview set forth in the February 2009 report, the social worker stated that the parents have not followed through with any requested services, not participated in drug treatment or regular testing, and had visited the minor only once.

In regard to mother, the February 2009 report stated the social worker met with parents after the January 21 court hearing. Mother appeared drowsy and her eyelids were drooping as she spoke to the social worker. Mother stated she still experienced sleepiness during the day due to the methadone she was taking. The social worker advised mother to consult with the program about the fact that her dosage was causing drowsiness. Subsequently, the social worker contacted mother's methadone counselor at the Haart Clinic. The counselor stated that mother's methadone dosage is the necessary dosage prescribed by the program physician. The dosage could be split and taken once in the morning and again in the afternoon in order to combat sleepiness induced by the drug. The program's concern with such an arrangement is that the second dosage must be sent home with the patient, who may not use it herself.

The social worker spoke with mother again by telephone on January 28. Mother stated she had gone to Highland Hospital for a morphine injection because she

experienced withdrawal symptoms. Mother stated she was without methadone for two or three days because she did not reach the Haart Methadone Clinic before its 10:00 a.m. closing time.

Further, a staff member at West Oakland Health council reported to the social worker that mother had not participated in services. Mother was unavailable for an appointment on January 27, was rescheduled for January 28, but cancelled that appointment because she had taken morphine. The social worker also stated that mother was referred to East Oakland Recovery for drug testing on January 16, 2009, and tested positive for alcohol.

Regarding the possibility of residential drug treatment, the social worker reported that mother contacted Center Pointe, but that program was concerned mother's methadone dosage was "very high and the Center Pointe program is very structured." Mother reported she had contacted other residential programs but they were full. The social worker noted many residential programs do not take methadone patients. On February 20, mother reported to the social worker that her methadone dosage had been reduced by 10 milligrams and that she plans to reduce it further. Mother acknowledged that she had not reported for treatment at West Oakland Health Council.

Regarding father, the February 2009 report states that he had not participated in drug treatment or testing but noted he is on the waiting list at West Oakland Health Council for the no-fee methadone program. As of February 20, parents reported that they were living together at a friend's place but the arrangement is only temporary.

Regarding P.D., the February 2009 report states that she is "sleeping 5 hours a night, eating well and gaining weight appropriately." Parents visited P.D. only once since she was placed in foster care, and for much of the time "were out of contact, could not be reached and did not request a visit. The social worker noted that P.D. was sick "for two visits scheduled on 1/31 and on 2/6" and "mother was a no show for a visit scheduled on 2/13." Father could not make the visit scheduled on February 13 because he had a conflicting court date. Both parents visited with P.D. on February 20, and the

social worker stated "the visit went well, the parents were both lucid, the mother was alert and the visit was appropriate."

At the hearing on February 23, 2009, the court received a declaration of paternity identifying appellant D.D. as P.D.'s father and found that D.D. is the presumed father. Additionally, the parties agreed to continue the matter until March 23, 2009, due to the fact that the Agency had not received responses from all the Indian tribes to all the ICWA notices sent out.

The Agency prepared a further Interim Report in connection with the hearing scheduled for March 23, 2009 (March 2009 report). The March 2009 report states that the ICWA does not apply. The report states that both the Apache Tribe and the BIA were notified and responded that there was no Apache tribal affiliation for the minor. The report attached proofs of service corresponding to the ICWA notices mailed to the tribes.

Regarding mother's current status, the March 2009 report states that mother was accepted into the Orchid program on February 27, 2009. To date, mother has visited with P.D. at the program on three occasions. The social worker reported she was present when mother visited with P.D. at the program on March 6, 2009. The visit "went well, the mother was alert and appropriately responsive to the minor." Orchid staff reported that mother's visit on March 13 also went well and that mother is alert during visits with the baby. Orchid staff also informed the social worker that a place in the program will be available for the minor on April 13, 2009.

In regard to mother's drugs and medications, Orchid staff informed the social worker that mother's methadone dose had been reduced from 120 milligrams to 100 milligrams per day. Additionally, the social worker reported mother has enrolled in a different methadone program named BART. The BART program may consider whether to change mother's dosage from once a day to twice a day (one in the morning and one in the evening) to combat the side effect of drowsiness induced by the drug. Further, mother informed the social worker that in the past she has been diagnosed with PTSD and Manic Depressive syndromes, and that she is presently receiving psychiatric medication services at the Schuman Lilies Clinic involving dosages of Ambien CR,

Clozopan and Lexopro. The social worker stated that she has submitted a release of information form to mother's psychiatrist in order to discuss mother's mental health diagnosis, but had not yet heard from the doctor.

In regard to father, the March 2009 report states that he "is now on track with visitation" with one supervised visit per week at the CPS office. Father reports that he is attending NA and AA meetings but has not enrolled in formal drug testing and treatment services at West Oakland Health Council where the social worker referred him. Father told the social worker he has a 15-year history of sporadic heroin use. Father states that currently he is not using heroin and is able to forego heroin use by purchasing methadone. Father also acknowledged he has no home where he can live with the minor. In regard to P.D., the March 2009 report states she "is doing well" and is "developing appropriately and appears healthy."

The March 2009 report recommended that P.D. remain in foster care with visitation for the parents as frequently as possible consistent with the minor's well-being. The report also recommended reunification services and noted those are limited to a period of six moths because the minor was under three years of age at the time of removal.

Mother and father were present and represented by counsel at the contested jurisdiction hearing on March 23, 2009. At the outset of the hearing, the Agency moved to amend the petition. Like the original petition, the amended petition asserts jurisdiction pursuant to section 300, subdivision (b) [failure to protect]. Additionally, the amended petition also asserts jurisdiction pursuant to subdivision (j) [sibling neglect]. In support of jurisdiction under section 300, subdivision (b), the amended petition alleged: "A. The mother tested positive for methadone at the time of the minor's birth. B. The mother demonstrated an inability to adequately care for the minor due to groggy and sleepy behavior resulting from her methadone use. C. The father admits to a fifteen-year history of heroin use. D. The father has currently not cooperated with any request to do drug testing or drug treatment. E. The father currently has no home in which he and the minor can reside. F. The mother has a history of abusing heroin."

In support of jurisdiction pursuant to section 300, subdivision (j), the amended petition alleges: "J-1 The mother has a history of abusing heroin. J-2 Daniel and Carlos D., children of both mother and father, were found to be dependents under section 300(b) and (g) due to (1) mother's chronic history of heroin use that renders her incapable of parenting the minors in an effective and safe manner; (2) the fact that mother has a total of ten children being cared for by other family members, two of whom were adopted[3]; and (3) mother's unstable housing."

No testimony was presented at the jurisdiction hearing on March 23, 2009. All parties submitted and argued the issue on the basis of the January 2009 jurisdiction report, the February 2009 interim report and the March 2009 interim report. The court issued its findings after entertaining argument from the parties. The court sustained the petition with respect to the allegation pursuant to section 300, subdivision (b). In this regard, the court found that there is a substantial risk of harm to P.D. as a result of mother's inability to care for the minor "due to groggy and sleepy behavior resulting from her methadone use.[4] The child would have no control over being treated adequately if the mother does experience grogginess and sleepy behavior and could be at risk as a result. [¶] The father is also in no position to care for this child at this time because of his 15-year-or-so history of heroin abuse."

As to the jurisdictional allegation pursuant to section 300, subdivision (j), the trial court stated that "the law requires [] not only . . . prior findings of dependency as to those

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[3] The amended petition was signed by the social worker on March 25, 2009 and filed the same day. However, at the March 23 hearing, when counsel for the Agency orally amended the petition, the trial court only took judicial notice of the two prior dependency proceedings involving siblings Daniel and Carlos, and rejected the allegation concerning mother's ten children. Thus, it should not have been included in the petition filed on March 25, 2009.

[4] The court prefaced this finding as follows: "There's one observation that another court reviewing this matter would not be able to make. So the court makes the observation that Ms. [C.G]. has been very groggy today. [¶] . . . During the course of these proceedings, Ms. [G.], you have been very groggy." The court noted that mother only "perked up" when she was mentioned in the proceedings.

children, Daniel and Carlos D., but [also] that there be a linking between the sibling status as a dependent . . . [and] substantial risk posed to this child in question." The court stated that the linkage between the prior dependency cases and this case was provided by a finding in the prior dependency case that Carlos was treated with morphine for heroin and methadone withdrawal after presenting at the hospital with an abscess on his chest. Thereafter, the court sustained jurisdiction pursuant to section 300, subdivisions (b) and (j), and declared P.D. a dependent of the court. The court ordered that the parents receive reunification services with visitation as frequently as possible consistent with the child's well-being, and that the parents "participate in all aspects of the case plan."

At the March 23 jurisdiction hearing, the trial court also made the following ICWA findings: "The mother states that she has no Indian ancestry. The father stated that he may have Apache Indian ancestry. The Apache tribe and the Bureau of Indian Affairs were both notified and responded that there is no Apache tribal affiliation for the minor and see the attached proof of those services and notification and responses as set forth in today's Agency report." Last, the trial court scheduled a dependency status review hearing for September 4, 2009.

Father filed a timely notice of appeal of the trial court's jurisdictional orders on March 25, 2009. Mother also filed a timely notice of appeal of the trial court's jurisdictional orders on April 2, 2009.

B. Writ Petition A126601

The Agency filed a Status Review Report (status report) on August 26, 2009, in connection with the forthcoming six-month status review scheduled for September 4. The status report states that parents lost contact with the Agency for a period of approximately two months and mother was located in Santa Rita jail on August 3, 2009. Father left a phone message with the Agency on August 7, and met with the social worker on August 13, 2009. At the meeting, father reported that he has been homeless for the past several months; that on July 13, 2009, he joined Berkeley Alternative Treatment Services (BATS) for methadone treatment; and that he is currently unemployed but actively seeking employment.

The status report states that mother met with the social worker on August 18, 2009. Mother reported she had been homeless for the past three months. Also, mother stated she was arrested on July 31, 2009, for robbery and was released without bail on August 13, 2009. Mother denies the robbery charge, continues to be unemployed and has not engaged in drug treatment. At the August 18 meeting with the social worker, mother also stated that she sunk into depression after she was discharged from Orchid and felt suicidal. Mother stated she self-admitted into John George Psychiatric Hospital in June 2009, and received psychiatric services, including a prescription for Lexapro.

The status report states that "mother has had minimal compliance with the case plan." In this respect, mother left the Orchid program around April 19, 2009. While at Orchid, mother continued to receive one dose of methadone per day from the Haart Clinic but failed to follow through on any of the Agency's referrals to substance abuse treatment programs. Further, mother has not maintained consistent visitation with P.D., having visited her on only four occasions—twice in March and twice in May 2009. There was a three-month disruption in visitation because parents were absent from the scene. As a consequence, P.D. has very little recognition of her mother at this time. The social worker noted that at a visit with mother on August 18, 2009, P.D. was screaming most of the time due to "age appropriate stranger anxiety," and the social worker cut the visit short on that account.

The status review report also states that father has showed "minimal[] compliance with his case plan." Father failed to follow through with any of the Agency's several referrals to drug treatment programs and failed to attend scheduled case plan meetings in June and July 2009. Father tested positive for heroin on July 13, 2009 when he presented for intake at the BATS treatment program. Moreover, the report noted that the BATS program is a methadone maintenance program that "does not provide comprehensive substance abuse treatment and does not independently meet [father's] case plan requirement." Father's visits with P.D. have also been inconsistent. Despite the opportunity of weekly visitations, father only visited twice in March, once in April and once in May 2009.

The status review report states that P.D. "has made excellent adjustment to her placement. She looks to her foster mother for comfort in an unfamiliar situation. She is easily consoled by her foster mother when distressed. Her withdrawal symptoms have reduced significantly to mostly once a week since her placement."

The status review report recommended that P.D. remain a dependent of the court in out of home placement. The status review report also recommended that reunification services to mother and father be terminated.

On September 2, 2009, the court was presented with a de facto parent application by P.D.'s foster caregiver, K.R. Upon review of the application, the court granted K.R. de facto parent status.[5] At the hearing on September 4, 2009, the parents requested the matter be set for a contested hearing on termination of reunification services. The trial court appointed counsel for the de facto parent and set the matter for October 5, 2009.

The Agency filed an addendum report dated October 2, 2009, in connection with the forthcoming contested status review hearing on October 5. The addendum report acknowledged that since the status review report of August 26, parents "have both been diligently involved in their treatment plan," have asked for more drug testing and have been visiting P.D. with regularity. The addendum report stated, however, that "parents have not entered treatment or made much effort until shortly before the six month review hearing and are at the very beginning stage of their recovery. Both of them still struggle with unstable housing." In the addendum report, the social worker opined that while parents should be commended for their recent efforts, there is not "a substantial probability that they can mitigate the risk" that led to P.D.'s removal. Accordingly, the addendum report recommended that reunification services be terminated for both mother and father and a section 366.26 hearing be set.

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[5] " 'De facto' parent means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period." (Cal. Rules of Court, rule 5.502(10).)

At the contested status review hearing on October 5, 2009, the counsel for the Agency moved that the September 2009 status review report and October 2009 addendum report be moved into evidence and rested his case in chief. Father testified that he attended 25 Narcotics Anonymous meetings between September 10 and October 9, 2009, and provided an attendance record of those meetings.
On cross-examination, father asserted he missed visitations with P.D. from May through September because visitations were suspended and his living arrangements were "complicated." On rebuttal, the Agency's child welfare worker, Honghui Luo, stated that the Agency "never suspended any visits." Luo stated that from May to the present father had visited with P.D. four times.

Mother testified that she has been residing in the Orchid Women's Recovery Home since August 25, 2009. Mother testified that at Orchid she attends twice-weekly classes in relapse prevention, parenting, and anger management. She also attends NA/AA meetings several times a week. Regarding visitation, mother testified she had two visits with P.D. at Orchid and one visit at the Agency's office on Broadway. Mother stated she did not visit P.D. for a period of several months because she was homeless and her hygiene "was not up to par." Mother explained she did not want to visit in a dirty condition and perhaps make the baby sick.

Mother acknowledged she was currently taking methadone. She stated she had reduced her dosage from 120 milligrams down to 30 milligrams per day. Mother stated that two weeks ago she started weekly psychotherapy sessions at Earth Circle. Also, mother states that she has drug testing once a week at Orchid.

On cross-examination, mother acknowledged she was in the Orchid program in February 2009 and stayed for approximately six weeks. Mother stated program staff at Orchid told her not to come back after she was out on a pass, overslept and failed to make it to her methadone clinic by the time it closed at 9:00 a.m.

After entertaining oral argument, the trial court found that the minor's out-of-home placement continues to be necessary and appropriate. The court terminated reunification services to mother and father on the grounds that the minor was under three

years of age at the date of removal and "there is clear and convincing evidence that mother and father failed to participate regularly and made substantial progress in a Court-ordered treatment plan until very recently." The court set a section 366.26 hearing for January 28, 2010. Mother filed a timely Notice of Intent to File Writ Petition on October 8, 2009.

DISCUSSION

A. Appeal No. A124470

1.

Father contends that the amended and sustained allegations of the dependency petition are facially insufficient to support the juvenile court's finding of jurisdiction. Relying on the decision by the First District Court of Appeal, Division Five, in *In re David H.* (2008) 165 Cal.App.4th 1626, 1637-1641 [holding that a challenge to the sufficiency of a dependency petition is forfeited if not raised below], respondent contends father waived any challenge to the sufficiency of the petition because he litigated the merits of the petition without demurring or moving to strike the petition as insufficient. In rebuttal to respondent's assertion of waiver, father argues that under the local rules for dependency proceedings a motion to challenge the legal sufficiency of a petition may be made orally or in writing at the detention hearing or the jurisdictional hearing. Further, father asserts the record shows he made such an oral motion because his trial counsel stated, "I would like to proceed by argument *as to the sufficiency of the petition*." Additionally, father relies on the fact that his counsel "joined the arguments of mother's trial counsel" and mother's trial counsel purported to argue "whether there's a legal basis for jurisdiction."

We need not address the issue of forfeiture in this case. Even if father did not forfeit the issue of the sufficiency of the dependency petition, the petition as amended was sufficient to assert grounds for jurisdiction. "A challenge to the sufficiency of a petition is treated as a demurrer. [Citations.] A reviewing court construes the well-pleaded facts in favor of the petition and determines whether a basis for jurisdiction is stated. [Citations.] In the dependency scheme, the petition is examined for whether

essential facts have been pleaded which establish 'at least one ground of juvenile court jurisdiction.' " (*In re James C.* (2002) 104 Cal.App.4th 470, 480.) In this regard, "a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. (Citation.)" (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Also, "a facially sufficient petition . . . does not require the pleader to regurgitate the contents of the social worker's report into a petition, it merely requires the pleading of essential facts establishing at least one ground of juvenile court jurisdiction." (*Id.* at pp. 399-400.)

In this case, the petition sought jurisdiction pursuant to section 300, subdivision (b), on the grounds that the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of the parents to care for child due to the parents' substance abuse. In support of jurisdiction on this ground, the petition alleged facts that mother tested positive for methadone at the time of the minor's birth and that mother's continued methadone use made her so "groggy and sleepy" that she could not adequately care for the minor. These facts, taken as true, adequately allege essential facts in support of the agency's assertion that there is a substantial risk of serious physical harm or illness to the infant, P.D., if placed in the care of mother who is materially affected by methadone use. Accordingly, we conclude the petition would have survived a facial challenge by father to jurisdiction on the basis of section 300, subdivision (b).[6]

2.

Mother, on the other hand, challenges the sufficiency of the evidence to support the dependency petition. To assert dependency jurisdiction, the juvenile court must find by a preponderance of the evidence that the allegations of the petition are true. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185; Cal. Rules of Court, rule 5.684(f).) A

[6] Accordingly, we need not address whether the petition was facially sufficient under section 300, subdivision (j). (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

challenge to the sufficiency of the evidence in dependency cases on appeal is governed by well-established rules: "If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]" (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251.)

Moreover, when a dependency petition alleges multiple grounds for asserting jurisdiction, we may affirm the juvenile court's finding of jurisdiction over the minor "if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (Citations.)" (*In re Alexis E., supra*, 171 Cal.App.4th at p. 451.)

Here, substantial evidence supports the trial court's assumption of jurisdiction pursuant to section 300, subdivision (b), on the grounds that P.D. has suffered or is at substantial risk of suffering serious physical harm or illness as a result of mother's history of substance abuse and the resulting inability to properly care for her child. In this regard, the record shows that P.D. suffered serious physical harm due to mother's history of substance abuse because she was born with an addiction to methadone. As a consequence, P.D. had to be hospitalized at birth, suffered serious withdrawal symptoms and had to be kept on morphine until she was able to transition to a less potent drug. This serious physical harm that P.D. suffered at birth is a direct result of mother's history of substance abuse.

Furthermore, the record also shows that as a result of her history of substance abuse, mother was ingesting methadone daily in an attempt to break her drug addiction. The Center Pointe treatment program opined that mother's daily dosage of 120 milligrams was "very high." Both hospital staff and the social worker observed that the

methadone caused mother to be groggy and sleepy during the day. Mother admitted to the social worker that her constant sleepiness was due to the methadone dosage. Staff at the Haart Clinic, where mother obtained the methadone, informed the social worker that 120 milligrams was mother's prescribed dosage, and that it could possibly be split into a morning and an evening dosage to combat sleepiness. By the time of the jurisdictional hearing, although mother had switched to the BART program and had reduced her dosage of methadone to 100 milligrams, she was still taking 100 milligrams in a single daily dosage and was still experiencing drowsiness as a side effect, which the trial court observed and specifically noted for the record.

Additionally, the record shows at the time of jurisdictional hearing, mother's drug addiction problems were ongoing and that at best she had only just begun to address the problem. Mother did not enroll in the residential treatment program at Orchid until February 27, 2009. The interim report of February 23, 2009, notes that mother had not followed through with any requested services and had not participated in drug treatment or engaged in regular drug testing. The only documented instance of mother testing for drugs was on January 16, 2009, at East Oakland Recovery, when she tested positive for alcohol. Moreover, mother admitted that she suffered withdrawal symptoms because she failed to attend her methadone clinic and that as a consequence she had to visit Highland Hospital for an injection of morphine.

In sum, on this record we conclude that substantial evidence supports the trial court's assumption of jurisdiction under section 300, subdivision (b) on the grounds that P.D. had suffered, and was under a substantial risk that she would suffer, serious physical harm on account of mother's history of drug abuse and inability to care for her.

3.

Both parents contend that the Agency failed to provide adequate notice under ICWA. The purposes of ICWA are to protect the interests of Indian children and to promote the stability and security of Indian tribes and families. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) The purposes of ICWA cannot be fulfilled unless proper notice is given to either the identified Indian tribe or the BIA. (*In re C.D.* (2003) 110

Cal.App.4th 214, 224.) The object of tribal notice is to enable a review of tribal records to ascertain a child's status under ICWA. (*In re D.T.* (2003) 113 Cal.App.4th 1449, 1455.) Notice, as prescribed by ICWA, ensures that "the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." (*In re Kahlen W., supra,* 233 Cal.App.3d at p. 1421.) "Notice is meaningless if no information or insufficient information is presented to the tribe to make that determination. [Citation.]" (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630.) "The notice 'must contain enough information to be meaningful. [Citation.] The notice must include: if known, (1) the Indian child's name, birthplace, and birth date; (2) the name of the tribe in which the Indian child is enrolled or may be eligible for enrollment; (3) names and addresses of the child's parents, grandparents, great grandparents, and other identifying information; and (4) a copy of the dependency petition.' (Citation.) 'It is essential to provide the Indian tribe with all available information about the child's ancestors, especially the ones with the alleged Indian heritage. [Citation.] Notice . . . must include available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data.' (Citations.)" (*In re K.M.* (2009) 172 Cal.App.4th 115, 119; see also section 224.2 [specifying the statutory requirements for ICWA notice, including those itemized in *In re K.M., supra*].)

The notices in this case fall short of the ICWA notice requirements described above. The notices failed to provide information on P.D.'s birthplace and the names and addresses of P.D.'s grandparents. The notices did not state that such information was unknown. Respondent concedes various omissions in the ICWA notices.

In *In re Veronica G.* (2007) 157 Cal.App.4th 179, we addressed the issue of the appropriate remedy where a parent challenges a juvenile court's jurisdictional order on the basis of defective ICWA notice. There, we held that reversal is appropriate only "where parental rights have been terminated" because an ICWA notice violation is not jurisdictional in nature. (*Id.* at p.187.) We concluded that prior to a termination of

parental rights, "the appropriate remedy [for an ICWA notice violation] is to remand for ICWA compliance." (*Id.* at p. 188.) The same remedy is appropriate here and it is so ordered.

B. Writ Petition

At the six-month status review hearing on October 5, 2009, mother's attorney argued that mother should be awarded six more months of reunification services because "then it's possible that eventually maybe the child would be returned." The trial court, however, found by clear and convincing evidence that mother failed to participate regularly and make substantial progress in the treatment plan, terminated reunification services and set a section 366.26 hearing. In her writ petition, mother contends that the trial court erred by denying her request for more services because there was a substantial probability P.D. could be returned home after mother received an additional six months of services.

In reviewing an order denying further reunification services, we affirm "if the order is supported by substantial evidence." (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839-840.) We review for substantial evidence, even where the trial court must make its findings based on clear and convincing evidence: "The 'clear and convincing' standard is for the edification and guidance of the juvenile court. It is not a standard for appellate review. [Citation.]" (*In re J.I.* (2003) 108 Cal.App.4th 903, 911.) On appeal, we determine whether there is substantial evidence from which a reasonable trier of fact could find by clear and convincing evidence a factual basis for the findings made. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.) Petitioner bears the burden of showing there was insufficient evidence to support the juvenile court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

At a regular six-month review hearing, the court must order the return of the child to the parents' custody "unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child."

(§ 366.21, subd. (e).) Special rules apply, however, for children like P.D. who are under three years of age on the date of their initial removal from the custody of the parent. "In cases where the child was under three years of age on the date of the initial removal from the physical custody of his or her parent or guardian . . . the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months." (361.5, subd. (a)(3), Stats. 2009, ch. 120, § 2.) At the six-month review hearing for these very young children, the court may terminate services and schedule a hearing pursuant to section 366.26 if the court "finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan." (§ 366.21, subd. (e).)

In this case, the trial courts' finding by clear and convincing evidence that mother had failed to participate regularly and make substantive progress in her court-ordered treatment plan is supported by substantial evidence. Mother's case plan as set forth in the January 2009 jurisdictional report calls for her to complete an inpatient drug treatment program and submit to regular drug testing, drug test upon a request of the social worker, participate in and complete a parenting education course. The case plan also provides that the parents must "visit consistently" with P.D. and meet with the social worker to assess progress with the case plan.

The record shows that between the time of the jurisdictional hearing on March 23, 2009, and the six-month review hearing scheduled for September 4, 2009, mother achieved at best only minimal compliance with the case plan. In this regard, the record shows that after entering the Orchid residential treatment program on February 27, 2009, mother either left or was ejected from the program around mid-April after only six weeks of treatment because she failed to attend the methadone clinic. Moreover, before mother left Orchid, she failed to follow through on any of the Agency's referrals to substance abuse treatment programs. Around the same time, mother was not visiting P.D. consistently because she made only two visits in March and two in May 2009. There

then followed a period of three months during which mother was homeless and did not participate at all in the case plan. Mother did not visit P.D. during this period and the Agency lost contact with her. During this time, mother was arrested and charged with robbery and spent two weeks in county jail.

Mother subsequently re-entered the Orchid program on August 25, 2009. Between then and the six-month review hearing on October 5, 2009, mother participated in various classes at Orchid, drug tested once a week, and visited P.D. regularly. Nevertheless, when measured against six months of minimal or no participation in services, mother's six weeks of participation in services immediately prior to the six-month review hearing does not constitute regular participation and "substantive progress in a court-ordered treatment plan." (§ 366.21, subd. (e).)

In sum, substantial evidence supports the trial courts' finding by clear and convincing evidence that mother had failed to participate regularly and make substantive progress in her court-ordered treatment plan. As noted above, where a trial court finds by clear and convincing evidence at the six-month review hearing that a parent failed to participate regularly and make substantive progress in the court-ordered treatment plan relating to a child under three years of age, the court "may schedule a hearing pursuant to Section 366.26 within 120 days." (§ 366.21, subdivision (e).) In this regard, a court abuses its discretion in setting the section 366.26 hearing only if the record shows that "there is a substantial probability the child may be returned to the parent [within six months], in which case the court *must* continue the case to the 12-month hearing." (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 179-180 (*M.V.*).)

This record, however, fails to provide a basis upon which we could find a substantial probability that P.D. may be returned to mother's care if mother received an additional six months of services. To establish a substantial probability of return, mother must show "a strong likelihood of a *possibility* of return" (*M.V., supra,* 167 Cal.App.4th at p. 181), based on such considerations as whether mother (1) "consistently and regularly contacted and visited the child"; (2) "has made significant progress in resolving the problems that led to the removal of the child"; and, (3) "demonstrated the capacity

and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs. (Cal. Rules of Court, rule 5.710(f).)" (*M.V., supra,* 167 Cal.App.4th at p. 177.) In this case, although mother has begun to address her methadone dependency and has made some progress in that regard, her long absence from the scene and minimal compliance with the treatment plan to date means that the record as a whole fails to provide a basis upon which we could find "a substantial probability the child may be returned to the parent" if the trial court had extended services for another six months. (*M.V., supra,* 167 Cal.App.4th at pp. 179-180.) Accordingly, we conclude the trial court did not err in terminating services pursuant to section 366.21 and setting the matter for a permanency hearing under section 366.26.

DISPOSITION

In A124470, the juvenile court's jurisdictional order is affirmed, and the matter is remanded to the juvenile court with directions to comply with inquiry and notice provisions of the ICWA, if it has not already done so. After proper notice under the ICWA, if it is determined that P.D. is an Indian child and the ICWA applies to these proceedings, parents are entitled to petition the juvenile court to invalidate orders that violated the ICWA. (See 25 U.S.C. § 1914.)

In A126601, the writ petition is denied.

_____
Jenkins, J.

We concur:

_____
McGuiness, P. J.

_____
Siggins, J.